



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 203120

PRELIMINARY RECITALS

Pursuant to a petition filed on September 7, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Buffalo County Department of Social Services regarding Medical Assistance (MA), a hearing was held on January 12, 2022, by telephone.

The issue for determination is whether the agency correctly determined and seeks to recover Badger Care Plus (BCP) overpayments in the amount of \$2,597 ([REDACTED]); \$1,097 ([REDACTED]) and \$860 ([REDACTED]).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Buffalo County Department of Social Services
Courthouse - 407 South Second Street
PO Box 517
Alma, WI 54610-0517

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Trempealeau County.

2. On August 25, 2015, the agency issued to petitioner an About Your Benefits notice, informing her that effective August 1, 2015, she was enrolled in BadgerCare Plus (BCP) with no monthly premium. It instructed her that, if her total monthly household income exceeded \$2,020.83, she was required to report it to the agency by the tenth day of the following month.
3. On July 21, 2021, the agency wrote to petitioner to inform her that she may have been overpaid BCP benefits and requested paystubs or other wage documentation from her employment at [REDACTED], [REDACTED] and [REDACTED] for certain periods between September 1, 2015 and May 31, 2018. To be provided by August 18, 2021.
4. On August 23, 2021, the agency issued to petitioner BadgerCare Plus Overpayment notice, informing her that she was not eligible for BCP she received from October 1, 2015 to April 30, 2016 in the amount of \$860 ([REDACTED]); from February 1, 2017 to December 31, 2017 in the amount of \$2,597 ([REDACTED]); from January 1, 2018 to May 31, 2018 in the amount of \$1,097 ([REDACTED]) which occurred because of client error for failure to report earned income.
5. On September 9, 2021, the Division received petitioner's request for hearing by U.S. Mail postmarked September 7, 2021.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the MA Handbook (MEH), §22.2.1. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Petitioner did not contest the agency's BCP computations or calculations. Her issue was with the contention that she failed to report wages correctly. She testified that her work at [REDACTED] included a piece rate so it was difficult to know how much she would make. The agencies "case comments" records show that petitioner and the employer [REDACTED] did at times provide income information to the agency, however, the agency showed that the wages reported were incorrect. The agency representative testified to his observation that petitioner renewed BCP in December annually and possibly wages were lower in that month than at other times. Case comments show that in October, 2015, the petitioner reported decreased wages from [REDACTED] and from that time until the end of that overpayment period, April 30, 2016, she did not report any wage information when her wages increased. For the second overpayment period from February 2017 to December 2017, petitioner reported wages only one time, in August, 2017. For the third overpayment period, petitioner reported wages in April, 2018 and the overpayment ended the following month. It is clear that petitioner did not report increased wages each time that occurred.

It is undoubtedly more difficult to report wages correctly when they vary than when they remain the same every week. However, petitioner's argument did not persuade me either that she did report correct wages, or that it was somehow impossible for her to do so. She was required to report income over the program limit after she earned it. She would have known this amount, at the latest, when her paycheck was issued. The agency did not require her to predict her wages in the future.

To determine petitioner's household income for the overpayment periods, the agency relied on SWICA wages from the third quarter of 2014 to the fourth quarter of 2018. (Ex. 9) It prepared an overpayment worksheet that detailed petitioner's income and the relevant income limit for the period from October 1, 2015 to May 1, 2018. (Ex. 10) Petitioner's income varied, as did her household size, during these periods. At times her income was between 100 percent and 133 percent of FPL and she was placed in an extension. The agency documented the amounts paid on petitioner's behalf for BCP which were a combination of claims paid and capitation fees. (Ex 11) Petitioner showed no errors in any of these reports or calculations and I found none.

The agency provided notice to petitioner of the requirement to report to the agency if she obtained insurance or if his household's gross monthly income exceeded \$2,020.03. The notice contained the information for how to contact the agency. The state continued to provide coverage by paying the net capitation for the petitioner's coverage. The agency calculated the overpayment by determining the premium amount the petitioner would have owed if he had reported the new employment and income. I conclude the agency has met its burden to demonstrate that it correctly seeks to recover an overissuance of BCP benefits from the Petitioner due to a failure to report increased income to the agency.

In her appeal, petitioner stated that she is a single mother of five and cannot afford to repay the overpayment. Nothing in the rules and regulations pertaining to the BCP program provide me the authority to forgive or excuse the overpayment because it would create financial hardship. It is the longstanding position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly determined and seeks to recover overpayments of BCP benefits for the period from October 1, 2015 to April 30, 2016 in the amount of \$860 (); from February 1, 2017 to December 31, 2017 in the amount of \$2,597 (); from January 1, 2018 to May 31, 2018 in the amount of \$1,097 (), all of which occurred as the result of petitioner error for failure to report earned income correctly.

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

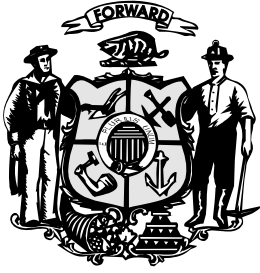
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 20th day of January, 2022



\s _____

Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 20, 2022.

Buffalo County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability